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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Establishing Rules and Policies for)
the Use of Spectrum for Mobile) IB Docket No. 96-132
Satellite Service in the Upper)
and Lower L-band)

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**COMMENTS OF
CELSAT AMERICA, INC.**

Celsat America, Inc. ("Celsat") hereby submits these comments in response to the Commission's Notice of Proposed Rule Making ("NPRM") in the above-captioned Docket.¹

Background

The NPRM proposes licensing policies to govern the mobile-satellite service ("MSS") in certain portions of the L-band. Specifically, the NPRM proposes to assign additional spectrum in the 1525-1530 MHz, 1530-1544 MHz, and 1626.5-1645.5 MHz frequency bands (the "lower L-band") to American Mobile Satellite Corporation, Inc. ("AMSC").

¹ Establishing Rules and Policies for the Use of Spectrum for Mobile Satellite Service in the Upper and Lower L-Band, Notice of Proposed Rule Making ("NPRM"), IB Dkt. No. 96-132, FCC 96-259 (released June 18, 1996).

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AMSC is currently authorized to use 28 MHz of spectrum in the 1545-1559 MHz and 1646.5-1660.5 MHz frequency bands (the "upper L-band") for the provision of MSS service. The NPRM notes the Commission's difficulty in coordinating the full 28 MHz of authorized spectrum due to a continued "stalemate" in international negotiations for this band. As discussed in a recent FCC Public Notice, the Commission has now successfully reached an agreement on the use of the L-band which resolves this coordination issue. Nevertheless, the NPRM continues to propose allocating spectrum in the lower L-band to AMSC.

Celsat has a Pioneer's Preference and a license application pending which partly formed the basis for the Commission's proposal to reallocate 70 MHz of spectrum in the 2 GHz band for MSS. In the instant NPRM, the Commission is proposing to grant AMSC what amounts to exclusive use of the L-band among U.S. carriers. Celsat requests that the Commission condition any such grant on (i) AMSC's withdrawal of any applications that may affect the proposed reallocation in the 2 GHz band and (ii) excluding AMSC from applying for the reallocated spectrum. As discussed below, this will allow competition to develop in the MSS market in furtherance of the Commission's policies and the public interest.

Statement of Interest

Celsat has applied for spectrum in the 1990-2025 MHz and 2165-2200 MHz bands in order to provide a new class of wireless telecommunications services known as "Hybrid Personal Communications Services."² To that end, Celsat supports the reallocation of 70 MHz of 2 GHz spectrum for MSS.³ As a potential competitor to AMSC in the MSS market, Celsat has a direct interest in this proceeding.⁴

Comments

I. The Commission's Concern that AMSC Will be Unable to Operate its MSS System Due to International Coordination Problems is No Longer Warranted

In 1989, the Commission issued a license to AMSC to construct, launch, and operate a three-satellite MSS system in the upper L-band.⁵ AMSC currently

² See Application of Celstat America, Inc., FCC File Nos. 26/27/28-DSS-P-94 (52139, 52140, 52141), filed April 8, 1994, as amended.

³ Comments of Celsat America, Inc. ("Celstat") filed June 21, 1995 in ET Dkt. No. 95-18 at 4.

⁴ See National Coal Ass'n v. Hodel, 825 F.2d 523 (D.C. Cir. 1987); see also D & B Broadcasting Inc., 7 FCC Rcd 8082 (1992); Stoner Broadcasting System, Inc., 74 FCC2d 547 (1979).

⁵ Amendment of Parts 2, 22, and 25 of the Commission's Rules to Allocate Spectrum for and Establish Rules Pertaining to the Use of Radio Frequencies in Land Mobile Satellite Service, Memorandum Opinion and (continued...)

is authorized to use 28 MHz of spectrum in the upper L-band for MSS service and is the only U.S. MSS system authorized to operate in this band. The NPRM notes, however, that in the course of international coordination with other L-band users,⁶ it became clear that the U.S. would not be able to secure sufficient spectrum in the upper L-band to provide the full 28 MHz of spectrum authorized to AMSC. As compensation for the deficiency "result[ing from] the continued stalemate,"⁷ the Commission in this NPRM proposes to give AMSC spectrum in the lower L-band up to the 28 MHz previously authorized.

The NPRM ignores, however, the recent agreement settling the coordination stalemate. Only one day after the NPRM was released, an international agreement was announced that laid the groundwork for AMSC and the other four satellite system operators to execute operating agreements and

⁵(...continued)

Order, 4 FCC Rcd 6041 (1989); Amendment of Parts 2, 22, and 25 of the Commission's Rules to Allocate Spectrum for and Establish Rules Pertaining to the Use of Radio Frequencies in Land Mobile Satellite Service, Final Decision on Remand, 7 FCC Rcd 266 ¶ 1 (1992), aff'd Aeronautical Radio, Inc., v. FCC, 983 F.2d 275 (D.C. Cir. 1993).

⁶ The other L-band users are Inmarsat, Canada, Mexico and the Russian Federation. See NPRM at ¶ 21.

⁷ FCC Proposes Spectrum for L Band Satellite System (IB Docket No. 96-132), FCC News, Report No. DC 96-55 (June 18, 1996).

assign frequency segments in the L-band for their use.⁸ A Memorandum of Understanding (the "MOU") was signed by the U.S., Inmarsat, Canada, Mexico and the Russian Federation to effect this agreement. The MOU appears to undermine the Commission's underlying rationale for giving AMSC the additional spectrum in the lower L-band and should be taken into account in this proceeding.⁹ At the very least, the instant rulemaking should be stayed pending review and comment on the MOU's impact in the instant docket.

II. Neither AMSC's nor its Investors' Expectations will be Unfulfilled if the Commission Secures Less Than the Full 28 MHz of Spectrum for AMSC

The NPRM also bases its proposal to grant spectrum in the lower L-band to AMSC on the premise that a holder of a Commission license should be given some reasonable expectation that the licensee will be able to implement its system. The Commission states that "[o]therwise applicants and licensees -- as well as their investors and potential customers -- may be unwilling to commit the significant resources necessary to implement proposed systems, and this will have a chilling effect on the introduction of new services to the public."¹⁰

⁸ FCC Hails Historic Agreement on International Satellite Coordination, FCC News, Report No. IN 96-16 (June 25, 1996).

⁹ The FCC staff has informed Celsat's attorneys that the exact terms of the MOU have not been officially released.

¹⁰ NPRM at ¶ 14.

However, AMSC has publicly asserted that it never expected -- and never needed -- the full 28 MHz in the upper L-band that the Commission has assigned to it.¹¹ Thus, the Commission's concern that AMSC's "reasonable expectation" will be unfulfilled if it is unable to acquire all 28 MHz of L-band spectrum is unjustified. Furthermore, it is noteworthy that AMSC's admission was made in a document filed with the Securities and Exchange Commission for the sole purpose of raising funds from potential investors whose capital would fund AMSC's project. Thus, these investors based their investment decision on the expectation that AMSC did not need or expect to receive the full 28 MHz of spectrum in the L-band. Therefore, the Commission's concern in the NPRM that it will undermine investor expectations if it fails to grant AMSC the full 28 MHz of spectrum in the L-band also is unwarranted.

Moreover, "[t]he Commission expressly recognized that the international coordination process would likely reduce the amount of spectrum available to its [AMSC's] system."¹² Thus, the Commission conditioned AMSC's license and

¹¹ Registration Statement on Form S-3 for American Mobile Satellite Corporation (1996), p. 14 (stating that access to approximately 20 MHz of L-band spectrum is sufficient for AMSC's purposes).

¹² In the Matter of the Application of Comsat Corp., Memorandum Opinion and Order, DA 96-742, (released May 13, 1996) at ¶ 39, n. 79. Indeed, the Commission also noted that "[r]equiring AMSC to operate in accordance with the outcome of the international coordination process is thus fully consistent with its license." Id. at ¶ 39.

authorized use of 28 MHz of spectrum subject to the final outcome of the international coordination process -- which has now concluded pursuant to the terms of the MOU.¹³ Therefore, the Commission's concern in the NPRM that AMSC may be receiving less than it expected is unwarranted. AMSC knew from the outset that it may receive less than 28 MHz of spectrum and apparently -- according to its SEC filing -- based its expectations on that premise. In addition, both the Commission and AMSC recognize that AMSC only needs 20 MHz of spectrum to operate its MSS.¹⁴ Thus, the Commission may fully satisfy its rationale for granting additional spectrum to AMSC by limiting the amount of spectrum to the 20 MHz AMSC apparently needs. If the Commission pursues this course, it may be possible to make the additional spectrum available to another potential operator. At the very least, the Commission should require AMSC to actually use whatever spectrum it may be granted in the lower L-band within a specified period of time or surrender any excess for use by others. Such a result would be consistent with the Communications Act.¹⁵

¹³ Amendment of Parts 2, 22 and 25 of the Commission's Rules, 4 FCC Rcd 6041, 6048 (1989).

¹⁴ The Commission estimates that 20 MHz is the minimum amount of spectrum necessary for a viable MSS system but seeks comment on this issue in the NPRM. See NPRM at ¶ 10.

¹⁵ 47 U.S.C. 151, 152.

III. If the Commission Authorizes the Additional Spectrum for AMSC, AMSC Should be Excluded From Applying for Spectrum Subject to ET Docket No. 95-18

In ET Docket No. 95-18, the Commission proposes to reallocate 70 MHz of 2 GHz spectrum for competing MSS systems. Celsat filed comments in that docket supporting the Commission's proposals and urged the Commission to adopt a spectrum ownership restriction applicable to MSS providers generally.¹⁶ In light of the Commission's proposal to allocate to AMSC what amounts to all the L-band spectrum available to U.S. carriers, Celsat requests that the Commission condition the grant to AMSC on AMSC not filing, whether directly or indirectly through an affiliate, any application for the reallocated 2 GHz spectrum. Furthermore, Celsat requests that the Commission require AMSC to withdraw any pending applications that could affect the reallocated 2 GHz spectrum.

AMSC already possesses a competitive advantage in the provision of MSS services by virtue of its spectrum allocation within the L-band. If AMSC is granted spectrum in the 2 GHz band, free competition in the market for the provision of MSS services would be further inhibited because the entrenched competitor -- AMSC -- would have sole access to the L-band in addition to the ability to provide MSS service in the 2 GHz band.

¹⁶ Celstat at 5.

Moreover, excluding AMSC from the 2 GHz band would serve the public interest by allowing new competitors to enter the market for MSS service who have been otherwise excluded from the L-band by virtue of AMSC's exclusive use of it.¹⁷ The Commission expressed its doubts in the NPRM that the L-band can support a second MSS provider for technical reasons. Thus, the Commission cannot promote competition in the market for MSS service solely within the L-band. However, the Commission can promote such competition in the overall MSS market by conditioning AMSC's grant of additional spectrum in the L-band on its exclusion from the 2 GHz band.

Conclusion

For the foregoing reasons, Celsat requests the Commission to condition any grant to AMSC of spectrum in the L-band on AMSC's exclusion from competing for spectrum in the reallocated 2 GHz band. In addition, Celsat requests that the Commission require AMSC to demonstrate within a reasonable

¹⁷ Adoption of a competition policy for MSS is consistent with past Commission precedent and policy. The Commission has consistently applied attribution rules and spectrum ownership restrictions to prevent providers of substantially similar communications services from achieving market power. For example, the Commission adopted attribution rules and spectrum ownership restrictions to serve similar competition policy goals in the context of cellular/PCS cross-ownership (47 C.F.R. § 24.204; see also 47 C.F.R. § 73.3555), maximum PCS spectrum ownership (Id.), and CMRS cross-ownership (47 C.F.R. § 20.9).

time period its use of any additional spectrum it is granted in the L-band or
surrender the excess spectrum for other potential competitors in the MSS service.

Respectfully submitted,

CELSAT AMERICA, INC.

A handwritten signature in dark ink, appearing to read "David Otten", is written over a horizontal line.

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